



CRP No.4515 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-09-2025

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

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1.Janaki
W/o.Kanakaraj,
No.21/5 Avvai Joint Street, Punjai Puliampatti,
Sathyamangalam Taluk, Erode District.

2.Kanakaraj
S/o.Ammasai Gounder,
No.21/5 Avvai Joint Street, Punjai Puliampatti,
Sathyamangalam Taluk, Erode District.

Petitioner(s)/Plaintiff(s)

Vs

1.The Commissioner
Punjai Puliampatti Municipality
Punjai Puliampatti,
Sathyamangalam Taluk, Erode District.

2.The Chairman
Punjai Puliampatti Municipality
Punjai Puliampatti,
Sathyamangalam Taluk, Erode District.

3.The Vice Chairman
Punjai Puliampatti Municipality
Punjai Puliampatti,
Sathyamangalam Taluk, Erode District.



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Respondent(s)/Defendant(s)

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Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 01.03.2025 passed in I.A.No.2 of 2024 in O.S.No.146 of 2024 on the file of the District Munsif Court, Sathyamangalam.

For Petitioner(s): Mr.N.S.Amogh Simha

For Respondent(s): Mr.S.Haja Nazirudeen,
Additional Advocate General assisted by
Mr.B.Anand, Standing Counsel

ORDER

Challenging the order dated 01.03.2025 passed in I.A.No.2 of 2024 in O.S.No.146 of 2024 on the file of the District Munsif Court, Sathyamangalam, the revision petitioners/plaintiffs have preferred the present civil revision petition.

2. The revision petitioners/plaintiffs have filed the suit in O.S.No.146 of 2024 on the file of the District Munsif Court, Sathyamangalam, for permanent injunction restraining the defendants from disturbing the revision petitioners'/plaintiffs' peaceful possession in the suit schedule mentioned properties. There are two schedule of properties mentioned in the



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plaint viz. item no.1 pertains to shop no.13, which belongs to the first revision petitioner/first plaintiff and item no.2 pertains to shop no.14, which belongs to the second revision petitioner/second plaintiff. The defendants have filed their written statement, necessary issues were framed and the suit is pending trial. At that stage, the revision petitioners/plaintiffs filed I.A.No.2 of 2024 in O.S.No.146 of 2024 under Order 26 Rule 9 and Section 151 CPC to appoint an Advocate Commissioner to note down the physical feature of the suit properties with the assistance of a qualified Engineer and to file a report. The defendants resisted the petition by stating that some of the shop holders have preferred writ petitions before this Court and this Court, vide orders dated 01.07.2024 and 23.07.2024 directed the Public Works Department (PWD), Building (Construction and Maintenance Division), Erode, to visit the suit schedule properties *i.e.* M.G.R. Commercial Complex and Jawahar Main Road Commercial Complex along with a Structural Engineer and find out the structural stability of the said buildings and file a report.

3. In pursuance to the order of this Court, the officials concerned inspected the properties and submitted their report, wherein, it has been opined that on the the results of physical verification and Non Destructive Test corrosion is highly pronounced with leads to spalling concrete and sudden



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failure may occur in future at any time without warning and buildings are structurally unstable. Upon hearing either side, the Court below, *vide* order dated 01.03.2025 dismissed the application on the ground that as per the directions issued by this Court in the writ proceedings with the observation that the suit building is in the stage of corrosion and sudden failure may occur in future at any time without warning. The Court below found that it is unnecessary to appoint an Advocate Commissioner to note down the physical features of the suit schedule property.

4. Aggrieved over the same, the revision petitioners/plaintiffs have preferred the present petition.

5. The learned counsel appearing for the revision petitioners/plaintiffs would submit that the trial Court has failed to exercise its discretion in accordance with law and committed an error in dismissing the application filed by the revision petitioners/plaintiffs without any valid and cogent reasoning. Further, the trial Court failed to note that the application has been filed by the revision petitioners/plaintiffs in order to appoint an Advocate for ascertaining the nature of the suit schedule property along with independent Civil Engineer to examine the stability of the structure to file a final report,



which will help the Court to arrive at a conclusion. The Court below also failed

to note that the revision petitioners/plaintiffs are in lawful possession of the suit properties and they are entitled to conduct business in the building. Further submit that the trial Court *vide* order impugned dated 01.03.2025 relied on the decision of this Court produced by the respondents/defendants in order to come to a conclusion that the stability of the building has already been determined, without even providing an opportunity to the revision petitioners/plaintiffs to deal with the stand. Therefore, it is just and necessary to appoint an Advocate Commissioner to note down the physical features of the suit property.

6. *Per contra*, the learned Additional Advocate General assisted by the learned Standing Counsel appearing for the respondents/defendants would submit that some of the shop holders in the buildings in M.G.R. Commercial Complex and Jawahar Main Road Complex, filed writ petitions in W.P.No.15942 of 2024, *etc.* batch before this Court and this Court, *vide* order dated 01.07.2024, directed the PWD and other officials to visit the buildings and to file the structural stability report and accordingly, the report dated 01.08.2024 came to be filed. In the said report, the Executive Engineer has opined that on physical verification and Non Destructive Test, it is found that corrosion is highly pronounced with leads to spalling concrete and sudden



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failure may occur in future at any time without warning and the buildings are structurally unstable. He would further submit that out of fifteen shops in M.G.R. Commercial Complex all other tenants have vacated and only the revision petitioners/plaintiffs herein have filed the suit before the Court below and refusing to vacate by stating the pendency of the suit and thereby, the revision petitioners/plaintiffs unlawfully obstructing and delaying the demolition of the old building and construction of the new building in spite of the knowledge about the unstable condition of the building and the orders of this Court dated 08.08.2024, 27.09.2024 and 08.11.2024.

7. It is well settled that an Advocate Commissioner cannot be appointed to collect evidence for the parties to strengthen their case. In a suit for permanent injunction, it is for the revision petitioners/plaintiffs, who are the tenants, to establish their case in a manner known to law, as the burden of proof lies on them. It is not necessary to appoint an Advocate Commissioner to note down the physical features of the suit schedule shops, which belongs to the municipality.

8. In such view of the matter, this Court does not find any reason to interfere with the order of the Court below.



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In the result, this civil revision petition stands dismissed. No costs.

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
nsd

To

The District Munsif,
Sathyamangalam.



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